

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RYAN MCFADYEN, et al)	
)	
Plaintiffs,)	
)	
v.)	No. 1:07-CV-953
)	
DUKE UNIVERSITY, et al)	
)	
Defendants.)	

DEFENDANTS
BAKER, CHALMERS, COUNCIL, EVANS, HODGE,
LAMB, MIHAICH, RIPBERGER, and RUSS
MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT
FED. R. CIV. P. 12(b)(6)

Defendants Patrick Baker, Steven Chalmers, Beverly Council, Laird Evans, Ronald Hodge, Jeff Lamb, Stephen Mihaich, Michael Ripberger, and Lee Russ (“Defendants”) respectfully move the Court, pursuant to FED. R. CIV. P. 12(b)(6), to dismiss Plaintiffs’ Second Amended Complaint, (Docket ## 136-66), for failure to state a claim upon which relief can be granted. In support thereof, and pursuant to this Court’s February 16, 2010 Order, (Docket # 135), Defendants incorporate the reasons set forth in their Briefs in Support of their original Motions to Dismiss, (Docket ## 56, 58), their Reply Briefs in Support of their Motions to Dismiss, (Docket ## 102, 105), their Supplemental Brief in Support of their Motion to Dismiss, (Docket # 122), and their Suggestion of Subsequently Decided Authority, (Docket # 134).

Because of the complexity of the causes of action at issue in this case, Defendants request oral argument be scheduled on their Motion to Dismiss pursuant to Local Rule 7.3(c)(1).

WHEREFORE, Defendants Baker, Chalmers, Council, Evans, Hodge, Lamb, Mihaich, Ripberger, and Russ respectfully pray the Court that:

1. The Action against these Defendants be dismissed;
2. Judgment be entered for Defendants;
3. Plaintiffs have and recover nothing from Defendants; and
4. Defendants have such other and further relief as the Court shall deem just and proper.

Respectfully submitted, this the 10th day of March, 2010.

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By: /s/ Patricia P. Kerner

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v.)	Case No. 1:07-CV-00953
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DUKE UNIVERSITY, <i>et al</i> ,)	
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Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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This the 10th day of March, 2010.

Respectfully submitted,

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